

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant(s): Norsworthy et al.
Appl. No.: 09/882,198
Conf. No.: 8393
Filed: June 15, 2001
Title: PET FOOD KIOSK
Art Unit: 3689
Examiner: Araque, Gerardo Jr.
Docket No.: 115808-460

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF

Sir:

I. INTRODUCTION

Appellants submit Appellants' Reply Brief in response to the Examiner's Answer dated March 21, 2008 pursuant to 37 C.F.R. § 41.41(a). Appellants respectfully submit the Examiner's Answer has failed to remedy the deficiencies with respect to the Final Office Action dated June 28, 2007 as noted in Appellants' Appeal Brief filed on December 21, 2007 for at least the reasons set forth below. Accordingly, Appellants respectfully request that the rejections of pending Claims 1-24 be reversed.

II. THE REJECTION OF CLAIMS 1-4 AND 6-11 UNDER 35 U.S.C. § 102(e) SHOULD BE REVERSED BECAUSE STEURY FAILS TO DISCLOSE OR SUGGEST EVERY ELEMENT OF THE CLAIMED INVENTION

Appellants respectfully request that the Board reverse the anticipation rejections of Claims 1-4 and 6-11 under 35 U.S.C. §102(e) because the Examiner has still failed to provide sufficient evidence that each and every limitation of the present claims is disclosed by *Steury*.

- a. Steury fails to disclose or suggest a kiosk capable of receiving information regarding a pet and generating a pet profile based on the information

Appellants respectfully submit that *Steury* fails to disclose every element of the present claims. Independent Claim 1 recites, in part, a kiosk configured for selling and manufacturing customized food for a pet that includes a customer interface area for receiving information regarding the pet and a computer for receiving information regarding the pet and generating a pet profile. The information regarding the pet is unique to the pet and includes facts such as the activity level and body condition of the pet, the gender and age of the pet, the flavor preference of the pet, and whether the pet has been spayed or neutered. See, Specification, paragraph 21. Each profile is based in part on the information received regarding the pet “and contains the specific customized food product and recommended feeding instructions for the specific pet.” See, Specification, paragraph 14, lines 10-17; paragraph 16, lines 1-5.

In contrast, *Steury* is entirely directed to a kiosk for dispensing and accepting returns of items stored in a kiosk. See, *Steury*, column 1, lines 52-58. The Examiner relies on the disclosure of personal identification numbers and an interactive user data entry panel in *Steury* as support for the claimed elements of a customer interface area for receiving information regarding the pet and a computer for receiving information regarding the pet and generating a pet profile. See, Examiner’s Answer, page 3, lines 15-16 and 21-22; *Steury*, column 3, lines 60-62; column 4, lines 38-39. However, the interactive user data entry panel of *Steury* is merely capable of “sens[ing] user actions to dispense or return specific items from and to inventory.” See, *Steury*, column 4, lines 39-41. The data panel provides detailed instructions and lists of the stored items and allows the user to make selections regarding the stored items. See, *Steury*, column 4, lines

47-54 and 58-61. As shown in Figures 11 and 12, the data entry panel of *Steury* provides the user with limited options and only allows the user to: (1) touch or select a product; (2) choose whether to retrieve or return the item; and (3) select the payment method. See, *Steury*, Figures 11-12. Nowhere does *Steury* disclose or suggest that the interactive user data entry panel is capable of receiving information regarding a pet or further processing this information to generate a pet profile. In fact, *Steury* never uses the phrases “pet” or “pet profile” anywhere in its specification.

The Examiner asserts that *Steury* discloses a kiosk in accordance with the present claims because *Steury* is capable of performing the functions of receiving information regarding a pet and generating a pet profile. See, Examiner’s Answer, page 12, lines 3-7. However, Appellants respectfully submit that the kiosk of *Steury* is structurally different from the kiosk of the present claims because it is not capable of receiving information regarding a pet and generating a pet profile. The only customer interface area disclosed in *Steury* is the interactive data panel. See, *Steury*, column 4, lines 38-39. The interactive data panel contains icons and a display screen. See, *Steury*, column 4, lines 47-48. The icons and display screen “provide detailed instructions and lists of the stored items. The user follows the menu’ed instructions and selection sequence displayed at the [display screen] to make appropriate selections.” See, *Steury*, column 4, lines 58-61. Nowhere does *Steury* disclose that the interactive data panel is capable of receiving unique information regarding a pet or further processing that information to generate a pet profile. The kiosk responds to the user selection by dispensing the selected item(s) or accepting such items and returning them to inventory. See, *Steury*, column 5, lines 11-18. Thus, Appellants respectfully submit that the kiosk *Steury* is merely capable of receiving user information regarding stored items and is not capable of receiving unique information regarding a pet and further processing that information to generate a pet profile. As such, *Steury* fails to disclose or suggest a kiosk configured for selling and manufacturing customized food for a pet that includes a customer interface area for receiving information regarding the pet and a computer for receiving information regarding the pet and generating a pet profile as required, in part, by independent Claim 1.

- b. Steury also fails to disclose or suggest a kiosk with biological sampling and handling and ingredient mixing areas

Appellants also respectfully submit that *Steury* fails to disclose a kiosk with biological sampling and handling and ingredient mixing areas as required, in part, by the present claims. Independent Claim 1 recites, in part, a kiosk configured for selling and manufacturing customized food for a pet that includes a biological sampling and handling area for analyzing the biological information regarding the pet and an ingredient mixing area. The biological sampling and handling area is used to analyze biological information about a pet through a computer or by an individual. See, Specification, paragraph 9, lines 24-29; paragraph 15, lines 1-4. The ingredient mixing area is used by an individual to mix the ingredients for the customized pet food product. See, Specification, paragraph 18, lines 5-8.

In contrast, *Steury* is entirely directed to a self-service kiosk for dispensing and accepting returns of items stored in a kiosk. See, *Steury*, column 1, lines 52-58. The Examiner relies on the disclosure of a display case with glass shelves in *Steury* as support for the claimed elements of a biological sampling and handling area and an ingredient mixing area. See, Examiner's Answer, page 3, lines 17-20; page 4, lines 3-5; *Steury*, column 4, lines 17-19. However, the display case of *Steury* is merely capable of displaying items representative of items stored in the kiosk. See, *Steury*, column 4, lines 29-33. As indicated by its title, the display case is sized merely to hold the stored items. See, *Steury*, column 4, lines 27-28 and 33-37. Nowhere does *Steury* disclose or suggest that the display case includes additional areas for biological sampling and handling and mixing ingredients.

The Examiner asserts that the kiosk of *Steury* is not structurally different from that of the present claims because the storage trays and top of the kiosk are capable of providing an area to mix ingredients and analyze biological samples. See, Examiner's Answer, page 3, lines 17-20; page 12, lines 1-4. However, Appellants respectfully submit that the kiosk of *Steury* does not provide areas sufficient to perform biological sampling and handling and ingredient mixing. The display case of *Steury* is used to display items representative of items that are stored in the kiosk. See, *Steury*, column 4, lines 23-37. Furthermore, the display case includes safety glass doors secured with a lock. See, *Steury*, column 4, lines 19-22. Thus, once the stored items are placed

in the display case, there are no areas accessible within the display case for biological sampling and handling or mixing ingredients.

Moreover, contrary to the Examiner's assertion, the top of the kiosk does not necessarily provide an area sufficient for an individual to mix ingredients or perform biological sampling and handling. For example, the display case described in *Steury* is 5 feet tall. See, *Steury*, column 4, lines 25-27. The average individual is between five and six feet tall, so an individual likely could not mix ingredients on the top of a kiosk that is at eye level. Furthermore, although the height of the kiosk may be varied as desired based on the enclosure, the dimensions of the enclosure depend on the amount and size of the merchandise. See, *Steury*, column 4, lines 27-28 and 33-37. Nowhere does *Steury* disclose that the height of the kiosk is configured to allow an individual to mix ingredients or perform biological sampling and handling. Therefore, Appellants respectfully submit that the kiosk *Steury* merely provides a sufficient area to store items in a kiosk and does not disclose or suggest additional areas sufficient for biological sampling and handling and ingredient mixing. As such, *Steury* fails to disclose or suggest a kiosk configured for selling and manufacturing customized food for a pet that includes a biological sampling and handling area for analyzing the biological information regarding the pet and an ingredient mixing area as required, in part, by independent Claim 1.

For at least the reasons discussed above, *Steury* fails to teach, suggest, or even disclose all of the elements of Claims 1-4 and 6-11. Therefore, Appellants respectfully submit that Claims 1-4 and 6-11 are novel, nonobvious and distinguishable from the cited reference and are in condition for allowance.

III. THE REJECTION OF CLAIMS 12-15 AND 17-24 UNDER 35 U.S.C. § 103(a) TO BURGHARDI SHOULD BE REVERSED BECAUSE THE EXAMINER HAS NOT ESTABLISHED A PRIMA FACIE CASE OF OBVIOUSNESS

Appellants respectfully request that the Board reverse the rejections of Claims 12-15 and 17-24 under 35 U.S.C. §103(a) because the cited reference fails to disclose each and every limitation of the present claims.

- a. Burghardi fails to disclose or suggest selling or manufacturing a customized food product for a pet using a kiosk

Appellants respectfully submit that *Burghardi* fails to disclose every element of the present claims. Independent Claim 12 recites, in part, a method that includes: (i) providing a kiosk including at least one of a consumer interaction station, an analysis station and a workstation; and (ii) preparing a sample of the customized product for the consumer at the workstation. Similarly, independent Claim 20 recites, in part, a method for providing a customized food product for a pet using a kiosk that includes presenting the selected kibble and customized additive to the customer at the ingredient mixing and customer observation area. The customized food product is based on information unique to the pet and includes data such as the activity level and body condition of the pet, the gender and age of the pet, the flavor preference of the pet, and whether the pet has been spayed or neutered. See, Specification, paragraphs 21 and 22. The information is obtained from either a questionnaire or a biological sample and is used to generate a unique pet profile and create the customized pet food at the kiosk. See, Specification, paragraph 14, lines 10-16; paragraph 15, lines 8-11; paragraph 16, lines 1-5.

In contrast, *Burghardi* is entirely directed to a computerized system for determining a customized animal food product. See, *Burghardi*, column 1, lines 1-3. Nowhere does *Burghardi* disclose or suggest the use of a kiosk. In fact, the only support the Examiner cites for the disclosure of a kiosk is the statement in *Burghardi* that its “processors may be located in devices such as workstations, portable PC’s and/or hand held computers.” See, Examincr’s Answer, page 6, lines 7-9; page 8, lines 6-9; *Burghardi*, column 3, lines 32-34. However, merely because the processor of *Burghardi* may be located in a workstation is not sufficient support for a kiosk that includes a workstation in accordance with the present claims. For example, the kiosk of Claims 12 and 20 require, in part, a workstation or area capable of allowing an individual to prepare a sample of the customized food product for the consumer at the workstation. However, the “workstation” recited in *Burghardi* is merely a device for storing the processor. See, *Burghardi*, column 3, lines 32-34. Nowhere does *Burghardi* disclose or suggest an area sufficient for preparing a customized pet food product.

The Examiner asserts that *Burghardi* discloses a kiosk in accordance with the present claims because the workstation of *Burghardi* "would obviously be placed on some type of surface to carry out the analysis where consumer interaction (for example with a farmer) would be carried out." See, Examiner's Answer, page 13, lines 2-7. However, Appellants respectfully submit that the workstation of *Burghardi* does not necessarily include a surface with an area sufficient for preparing a customized pet food product for a consumer. For example, *Burghardi* specifically states that the ingredients for its customized product may be located at more than one location, including the farm associated with the animals or the mill of the ingredient supplier. See, *Burghardi*, column 4, lines 23-29. *Burghardi* also states that the processing of data may be divided among several processors, with each processor located in devices such as workstations, hand-held computers, or portable computers. See, *Burghardi*, column 3, lines 29-34. Thus, the processors need not all be located in one workstation and such workstation need not be in the same location as the ingredients. If the ingredients are not located at the workstation, Appellants respectfully submit that the workstation does not necessarily include a surface with an area sufficient for preparing a customized pet food product for a consumer. Thus, *Burghardi* merely discloses a process located in a workstation rather than a kiosk that includes a workstation for preparing a customized pet food product for a consumer. As such, *Burghardi* fails to disclose or suggest a kiosk configured for selling and manufacturing customized food for a pet as required, in part, by independent Claims 12 and 20.

- b. *Burghardi* also fails to disclose or suggest manufacturing a customized food product for a pet based on data obtained from a questionnaire or biological sample

Appellants also respectfully submit that *Burghardi* fails to disclose or suggest manufacturing a customized food product for a pet based on data obtained from a questionnaire or biological sample. Independent Claim 12 recites, in part, a method for providing a customized food product for a pet based on answers to a questionnaire regarding the pet and analysis of a biological sample of the pet. Similarly, independent Claim 20 recites, in part, a method for providing a customized food product for a pet based on information obtained from at least one of a biological sample of the pet and a questionnaire regarding the pet. The questionnaire and biological sample are used to determine the dietary needs of an individual pet and a customized

pet food product that can accommodate those needs. See, Specification, paragraph 2, lines 16-24. The information obtained from the questionnaire or biological sample is unique to the pet and includes data such as the activity level and body condition of the pet, the gender and age of the pet, the flavor preference of the pet, and whether the pet has been spayed or neutered. See, Specification, paragraphs 21 and 22.

In contrast, *Burghardi* is entirely directed to providing a custom animal feed product based on characteristics typical of that type of animal. For example, the customized feed of *Burghardi* depends on four types of data: (1) data representative of feed ingredients located at a first location; (2) data representative of feed ingredients located at a second location; (3) animal data representative of characteristics of the animal; and (4) evaluation data such as animal production rate, cost of feed per unit weight gain of the animal, and feed weight per unit weight gain of the animal. See, *Burghardi*, column 4, lines 26-34 and 45-49. The animal data includes parameters related to its genotype, production level, environment and feeding regime. See, *Burghardi*, column 4, lines 31-33. Nowhere does *Burghardi* disclose or suggest providing a questionnaire or analyzing a biological sample to obtain such data.

The Examiner asserts that “one of ordinary skill in the art would have found it obvious to analyze a pet’s biological sample in order to accurately analyze a pet’s diet” and obtain a better customized feed. See, Examiner’s Answer, page 13, lines 21-22; page 14, lines 1-7. However, Appellants respectfully submit that one of ordinary skill in the art need not analyze a biological sample to obtain the animal data used in the feed product of *Burghardi*. For example, the animal data used to determine the feed product of *Burghardi* includes: (i) evaluation data such as animal production rate, cost of feed per unit weight gain of the animal, and feed weight per unit weight gain of the animal; and (ii) parameters related to its genotype, production level, environment and feeding regime. See, *Burghardi*, column 4, lines 26-34 and 45-49. All of this data can be obtained without analysis of the individual animal’s biological sample. Thus, *Burghardi* fails to disclose or suggest manufacturing a customized food product for a pet based on data obtained from a questionnaire or biological sample as required, in part, by independent Claims 12 and 20.

Even if it would be obvious to analyze a stool sample or manufacture a customized pet food product based on a stool sample, *Burghardi* fails to disclose or suggest analyzing the biological sample or receiving the questionnaire regarding the pet at the kiosk. The Examiner alleges that since the feed product of *Burghardi* is used for animals that produce food or dairy

products, the animal's milk would need to be analyzed to determine if it meets specific standards. See, Examiner's Answer, page 14, lines 1-7. However, the mere fact that the product would be analyzed by someone does not necessarily disclose analyzing the animal product at the kiosk. For reasons discussed previously, *Burghardi* fails to disclose or suggest a kiosk in accordance with the present claims. As such, *Burghardi* also fails to disclose or suggest performing an analysis of the biological sample at the kiosk or receiving the biological sample or pet questionnaire at a customer interface area of the kiosk as required, in part, by the present claims.

Accordingly, Appellants respectfully request that the obviousness rejections with respect to Claims 12-15 and 17-24 be reconsidered and the rejections be withdrawn.

IV. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the Final Office Action. Therefore, Appellants respectfully request that the Board of Appeals reverse the obviousness rejections with respect to Claims 1-24.

No fee is due in connection with this Reply Brief. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-460 on the account statement.

Respectfully submitted,

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